IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/04/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.5087 of 1999 and W.P.No. 5666 of 1999 and W.P.No. 14635 of 1999

W.P.No.5087 of 1999:

M/s.Bhavani Agencies
Proprietor Niranjan
rep. by Power Agent
Hameed Sulthan
S/o.T.R.Raja Mohammed
61, Millers Road
Kelleys, Chennai-10. .. Petitioner

-Vs-

1. State of Tamilnadu
rep. by Secretary to Government
Co-operation, Food and Consumer
Protection Dept., Fort St. George
Chennai-9.

2. The Joint Commissioner of Civil
Supplies and Consumer Protection
Chepauk, Chennai-5.

3. The Deputy Commissioner of Civil
Supplies, City (South) Chepauk
Chennai-5.

4. The Assistant Commissioner of
Civil Supplies, Anna Nagar Zone
M.M.D.A. Colony
Chennai-106. .. Respondents

W.P.No.5666 of 1999:

M/s.Kamakshi Sahayam Agencies
by its Partner D.Balakrishnan
44, Munuswamy Street
Ayanavaram, Chennai-23. .. Petitioner

versus

1. State of Tamilnadu
rep. by its Secretary to Government
Co-operation, Food and Consumer
Protection Dept., Fort St. George
Chennai-9.

2. The Joint Commissioner of Civil
Supplies and Consumer Protection
Chepauk, Chennai-5.

3. The Deputy Commissioner of Civil
Supplies, City (North) Chepauk
Chennai-600 005.

4. The Assistant Commissioner of
Civil Supplies, Perambur Zone
Perambur, Chennai-600 082. .. Respondents

W.P.No.14635 of 1999:

M/s.Vijay Agency
Proprietor: A.Kuzhandaisamy
rep. by Power Agent
T.R.Hameed Sulthan
61, Millers Road,
Kelleys, Chennai-10. .. Petitioner

versus

1. State of Tamilnadu
rep. by its Secretary to Government
Co-operation, Food and Consumer
Protection Dept., Fort St. George
Chennai-9.

2. The Joint Commissioner of Civil
Supplies and Consumer Protection
Chepauk, Chennai-5.

3. The Deputy Commissioner of Civil
Supplies, City (South) Chepauk
Chennai-600 005.

4. The Assistant Commissioner of
Civil Supplies, Triplicane Zone
Triplicane,
Chennai-600 082. .. Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for the issue of a writ of Certiorari as stated therein.

For petitioners in these W.Ps: No appearance

For respondents in these W.Ps: Mr.P.Chandrasekaran
Special Government Pleader

:ORDER

No representation on behalf of the petitioners in all these writ petitions.

2. Aggrieved by the proceedings of the first respondent, confirming the order of cancellation of their wholesale licence for dealing in kerosene under the provisions of the Tamil Nadu Kerosene (Regulation of Trade) Order, 1973, the petitioners have preferred the above writ petitions.

3. The Government, in exercise of powers under Section 3 of the Essential Commodities Act, 1955, read with the Government of India, Ministry of Mines and Fuel Order No.S.O.3524 dated 13.11.1962 and in supersession of the Tamil Nadu Kerosene control Order, 1968, notified the Tamil Nadu Kerosene (Regulation of Trade) Order, 1973, (hereinafter referred to as "the Kerosene Control Order") for maintaining supplies of kerosene and for securing its equitable distribution and availability at fair prices by granting licence to deal in kerosene either as authorised retailer, authorised wholesale dealer, bulk consumer or as dealer, etc. Admittedly, all these writ petitioners are wholesale dealers, who were granted licence under Clause 2 of the Kerosene Control Order.

4. The said wholesale licences were issued to the petitioners in Form-II. Conditions 4, 5 and 6 of the licence under Form-II read as follows:

" 4. The wholesaler shall not sell kerosene to any person other than a licensed dealer or registered retail dealer.

Provided that he may sell kerosene against special permit issued by the authorities nominated for this purpose under the Kerosene (Restriction on Use) Order, 1966.

5. The wholesaler shall maintain a register of daily account showing correctly all transactions of kerosene in his possession. It shall show --

(a) the opening stock on each day;

(b) the quantities and the brands received on each day showing the names of the suppliers; and

(c) the quantities sold, delivered or otherwise disposed of on each day showing the places of destination and the name of the consignor:

Note:-- When a licence is registered as a retail dealer the stock issued for retail trade should also be entered in the transactions and a separate account maintained for the retail sales.

(d) The closing stock on each day. "

5. Clause 7(1) of the Kerosene Control Order provides that the authorised officer may authorise any dealer whether a wholesaler or a retailer, to receive, hold and sell kerosene on behalf of the Government at such price and for such period as may be specified and dispose it of in such manner and subject to such conditions as may be specified by the authorised officer from time to time .

6. Clause 7(3) of the Kerosene Control Order, however, provides that any wholesaler or retailer so authorised under Clause 7(1) shall deal only in stocks of kerosene owned or controlled by Government.

7. Clause 7(4) of the Kerosene Control Order provides that every wholesaler or retailer shall keep and maintain a true and correct account and such other record as may be specified by the authorised officer from time to time.

8. Clause 13 of the Kerosene Control Order empowers the commissioner, viz., the second respondent herein, or the Collector, subject to the provisions of the Kerosene (Fixation of Ceiling Prices), Order, 197 0, or any other law or order issued by the Government of Tamil Nadu to fix by notification from time to time, as he find may necessary the prices at which kerosene may be sold by each wholesaler and retailer.

9. Clause 18(1) of the Kerosene Control Order provides for cancellation of licence or registration certificate for any contravention of the provisions of the Kerosene Control Order or the conditions of licence or the registration certificate, of course, after giving a reasonable opportunity to the petitioners, which power includes the power to pass an order of interim suspension, pending an enquiry.

10. Clause 19 of the Kerosene Control Order provides for the cancellation of the licence or registration certificate for the contravention of any order made under Section 3 of the Essential Commodities Act, 1955.

11. Clause 21 of the Kerosene Control Order provides for the disposal of the stock of kerosene when licence or registration certificate is cancelled; Clause 23 provides for the forfeiture of security deposits; and

Clause 25 provides for initiation of prosecution for the contravention or attempt to contravene any of the provisions of the Kerosene Control Order or the terms and conditions of the licence.

12. In all these writ petitions, actions were initiated against the petitioners, alleging contravention of conditions 4, 5 and 6 of the conditions

of licence, which, in turn, attract contravention of Clauses 7(1), (3) & (4) and 13 of the the Kerosene Control Order, invoking the powers conferred under Clause 18(1) of the Kerosene Control Order, on the ground that the petitioners, who are wholesale dealers, had not brought into account, kerosene drawn over and above the allotment made by the second respondent herein during July, 1989 and March, 19 90, and they had not maintained correct accounts, as contemplated under Conditions 4, 5 and 6 of the licence and had not maintained proper accounts as to whom the said kerosene was sold, as contemplated under Clauses 4, 5 and 6 of the licence read with Clauses 7(1),(3) & (4) and 13 of the Kerosene Control Order.

13. A show-cause notice was issued by the competent authority and the only explanation offered by the petitioners was that they were permitted to draw the excess quantity of kerosene from the oil company based on the directions of one K.Ramasamy, Senior Personal Assistant to the then Honourable Minister for Food dated 5.10.1989. the said letter reads as follows:

" K.RAMASWAMY SECRETARIAT
PERSONAL ASSISTANT MADRAS-600 089.
TO THE
MINISTER FOR FOOD Dated 5.10.89

To

The Terminal Manager
Indian Oil Corporation Limited
Madras-600 021.

Sir,

Sub: Additional Quantity - Reg.
Chengai Anna District
North Arcot District
- - -

You are requested to release additional Quantity of Kerosene to the list of Five dealers herewith enclosed not exceeding 250 Kl until further orders, till December.

Thanking you,

Yours sincerely,
Sd/- xxxxxxx
(K.RAMASWAMY)
Senior Personal Assistant to
Minister for Food
Secretariat, Madras-600 009.
List Enclosed:
cc:
To
The Chief Divisional Manager

Indian Oil Corporation Ltd.
Madras-2.

List of Dealers
Chengai Anna District

1. T.S.Rajah Mohamed (Minjur)
2. P.Jagadeesan (Arani)
3. Ganesa Oil Company (Chengalpattu)
4. Raj Agency (Poonamallee)

North Arcot District

5. C.Jayaraman (Panapakkam)

Sd/- xxxxxxx
(K.RAMASWAMY)
Senior Personal Assistant to
Minister for Food
Secretariat, Madras-600 009."

14. But, absolutely there is no explanation as to the violation of conditions 4, 5 and 6 of the licence and contravention of Clauses 7(1),(3) & (4) read with Clause 13 of the Kerosene Control Order, after giving a fair and reasonable opportunity, as contemplated under Clause 18(1) of the Kerosene Control Order. The licensing authority cancelled the wholesale licences of the petitioners by orders dated 26.5.19 92, 1.6.1992 and 29.5.1992 which was ultimately confirmed by the first respondent by the impugned proceedings dated 17.2.1999.

15. Even though the writ petition was posted for final disposal, there was no representation on 7.4.2003. Hence, the matter was posted today for dismissal. Unfortunately, even today, there is no representation on behalf of the petitioner.

16. In these writ petitions, the main grievance of the petitioners is that they were permitted to draw additional quantity of kerosene in view of the then impending parliamentary election. It was also contended that similar orders were passed, as in the case of the petitioners, by the then Honourable Minister for Food, permitting excessive drawal of kerosene, and therefore, it was contended that there was no violation of any of the conditions of licence or the provisions of the Kerosene Control Order. In addition to this, the petitioners contend that the impugned orders of cancellation of licence violate their fundamental rights conferred under Article 19(1)(g) of the Constitution of India.

17. Mr.P.Chandrasekaran, learned Special Government Pleader, drawing

strength from the averments mentioned in the counter affidavit filed by the respondents, submits that the excessive drawal of kerosene by the petitioners is not disputed and that the said excessive drawal is not supported by any direction of respondents-2, 3 and 4, and in any event, there is no proper explanation for the violation of conditions 4, 5 and 6 of the licence and contravention of Clauses 7(1),(3) & (4) and 13 of the Kerosene Control Order. Finally, it is contended that the petitioners, having violated the terms and conditions of the licence and also having contravened the Kerosene Control Order, are not entitled to contend that their rights under Article 19(1)(g) of the Constitution of India are violated.

18. I have gone through the affidavit filed on behalf of the petitioners and have also given careful consideration to the submissions of the learned Special Government Pleader, appearing on behalf of the respondents.

19. It is unfortunate that the actual history of the case was not brought to the notice of the learned Special Government Pleader by the instructing officers, nor the same was mentioned in the counter affidavit. During the course of arguments, Mr.P.Chandrasekaran, learned Special Government Pleader, confirms that the action in question is related to a Rs.10 crore corruption in the dealing of kerosene during 1 989-90, which was also referred to the Central Bureau of Investigation to be probed into. It is also confirmed that the Senior Personal Assistant to the then Honourable Minister for Food has no authority in law to direct the Oil Corporation, by his letter dated 5.10.1989, to supply excessive kerosene to the wholesale dealers. If that be so, I am unable to understand as to under what authority and on what basis the Oil Corporation acted upon the said letter given by the Senior Personal Assistant to the then Honourable Minister for Food.

20. It was also argued on behalf of the respondents that a malpractice had resulted in the Government losing nearly Rs.10 crores, and some of the senior I.A.S. Officers are involved in the malpractice and senior officers of the rank of Superintendent of Police were also involved in the said malpractice. The matter was also referred to the Central Bureau of Investigation to go into the malpractice for the allotment of kerosene during the relevant period. It appears that all the evidence appeared that a massive cover-up operation to protect the I.A.S. Officers was involved in the matter. When the enquiry revealed that kerosene allotted to the State by the Central Government, which were not fully lifted by some districts for various reasons, were diverted, and finally found its way to the Madras harbour area, where there was an ever-present demand for this fuel from truckers for adulterating diesel. It was also stated that the wholesale dealers of kerosene like the petitioners were in collusion with the Oil Companies and the officials prepared bogus allotment orders and thus diverted huge stock of kerosene for adulterating diesel. It was further stated that, of the 15 wholesale dealers involved, at least three were said to be in existence only on paper and the others vanished quietly once the truth thus came out, and those three dealers are the petitioners herein. This is the reason probably for the non-appearance of the learned counsel for the petitioner today. These facts are unfortunately not brought to my notice by the learned Special Government Pleader, who also pleads handicap for non-furnishing of necessary instructions

from the instructing officers.

22. On the merits of the case, I do not see any violation of the principles of natural justice, or illegality, irregularity or impropriety in the decision making process. Once the petitioners could not assail the impugned order on the ground of illegality, irregularity or impropriety in the decision making process, it is settled law that this Court, by exercising its power of judicial review under Article 22 6 of the Constitution of India, is ceased with the jurisdiction to interfere with the decision taken by the authorities in cancelling the wholesale licence granted to the petitioners, particularly when there is no error on the part of the authorities in holding the petitioners liable for the drawal of excess kerosene and for the failure of proper maintenance of the accounts, as contemplated under Conditions 4, 5 and 6 of the licence and Clauses 7(1), (3) and (4) and 13 of the the Kerosene Control Order.

23. The only reason stated by the petitioners that they were permitted to draw the excessive quantity of kerosene based on the letter given by the Senior Personal Assistant to the then Honourable Minister for Food is liable to be rejected, as the Senior Personal Assistant to the then Honourable Minister for Food has no authority to give such a letter under the provisions of the Kerosene Control Order. Once there is no evidence as to the illegality, irregularity or impropriety in the decision making process and the only reason placed by the petitioners is also found to be unsustainable in law, I do not find any reason to interfere with the impugned orders cancelling the wholesale licences of the petitioners. The petitioners, being wholesale dealers, having failed to comply with the conditions of licence and also contravened the provisions of the Kerosene Control Order, in my considered opinion, are not entitled to complain violation of Article 19(1)(g) of the Constitution of India. Therefore, the other remaining contention of the petitioners also fails. However, in addition to dismissing these writ petitions for the reasons stated above, in the interest of justice, I am obliged to direct the Chief Secretary to the Government to take appropriate action on the persons involved in the malpractice, irrespective of the rank in their service, and also against the persons, who failed to take follow-up action in the matter, in the administrative side, by not prosecuting the offenders. Realising the self-restraint of this Court in the exercise of powers under Article 226 of the Constitution of India, this Court reposes confidence that the Government shall take serious note of the above observations and report the action taken in this regard, expeditiously, in any event, within six months from the date of receipt of a copy of this order. With the above observation, these writ petitions are dismissed. No costs. Consequently, W.M.P.Nos.7429, 8219 and 21179 of 1999 are also dismissed.

Index: Yes
Internet: Yes

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7. The Assistant Commissioner of
Civil Supplies, Triplicane Zone
Triplicane, Chennai-600 082.

8. The Section Officer
Writ Section
High Court, Madras.